

## **REMARKS**

In the Ex parte Quayle Office Action, the Examiner required cancellation of claim 1 and redrafting of claims 2 – 9 in independent form.

### **Response to Quayle Action**

Claim 1 has been cancelled and claims 2 – 9 have been redrafted in independent form or to depend from an allowable independent claim.

### **Status of Claims 15 – 28**

In the action of April 20, 2006, the Examiner allowed claims 10 – 14 and 24 – 28. In the Supplemental Examiner's Answer of December 24, 2008, the Examiner raised a new §101 rejection of claims 15 – 28 and set a two month period for reply. On January 21, 2009, a response under 41.39(b)(1) was filed to submit amendments to claims 15-28, including to allowed claims 24 – 28, to address the §101 rejection and requesting re-opening of prosecution.

Prosecution was not re-opened. Instead, the Board of Patent Appeals and Interferences issued a Decision on Appeal mistakenly stating that no request to re-open prosecution had been filed and withdrawing the claims 15 – 28 from appeal. The Decision on appeal did not indicate that claims 15 – 28 were cancelled or otherwise withdrawn from the application.

Applicant's representative has contacted Examiner Felten via telephone or via email on five occasions beginning on August 5, 2010, to inquire as to the status of the claims 15 – 28. No response was received. Applicant's representative contacted the SPE identified in the actions via telephone on two occasions beginning August 6, 2010. No response was received. Applicant's representative contacted SPE Kramer and received a reply that claims 15 – 28 were "removed and dismissed."

Applicants submit that the withdrawal of claims 15 – 28 from appeal does not result in the claims being removed and dismissed from the application. Further, the only issue effecting claims 24-28 is the §101 rejection, which has been addressed by the amendment submitted on January 21, 2009, which was never considered or even addressed by the Examiner. Applicants submit that at least claims 24 – 28 are allowable and further that claims

16 – 23 are likewise allowable, particularly in view of the Decision on Appeal withdrawing the rejection of comparable apparatus claims.

Applicants have cancelled claims 15 – 28 without prejudice to comply with the Ex parte Quayle action, but reserve the right to file a continuation application including these claims.

**Conclusion**

Applicants respectfully request favorable reconsideration and allowance of the present application in view of the forgoing.

**Deposit Account Information**

The Commissioner is hereby authorized to charge any additional fees which may be required or to credit any overpayment to account no. 501519.

Respectfully submitted,



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